IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

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Plaintiff

v.

Miguel Forteza-Garcia,

Defendant

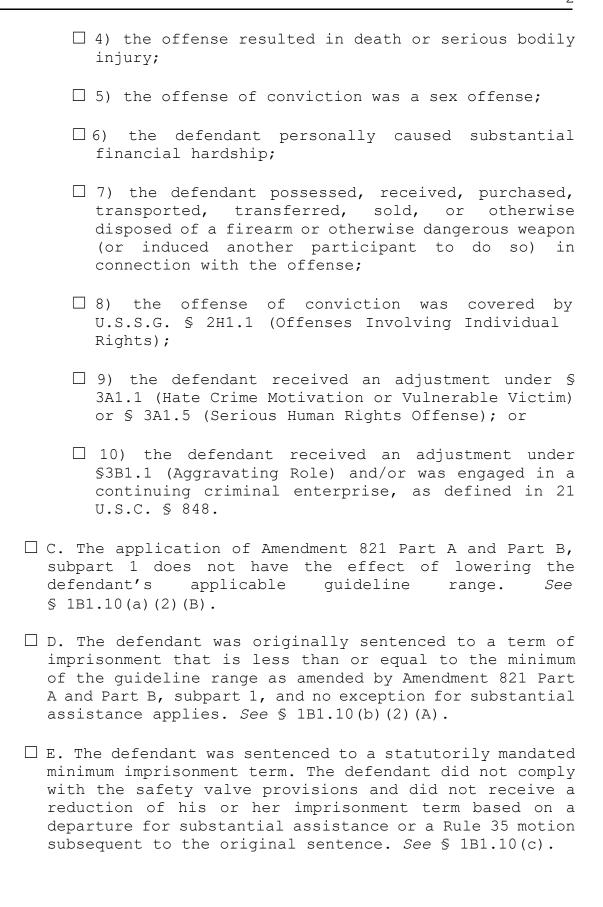
Criminal No. 03-cr-73-3

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION Re: Amendment 821

The below report and recommendation relates to an initial determination as to the defendant's eligibility for a sentencing reduction promulgated by the United States Sentencing Commission under Part A and Part B, Subpart 1 of Amendment 821 to Policy Statement § 1B1.10(d).

After careful review of the defendant's presentence report, charging document(s), plea agreement, plea supplement, judgment, and statement of reasons, I recommend that:

The defendant is \underline{not} eligible for a sentence reduction base on the following factor(s):	∍d
☐ A. The guidelines range that applied in the defendant case was not determined by U.S.S.G. § 4A1.1(d) defendant's status as a zero-point offender und Chapter 4, Part A.	or
\square B. The defendant does not meet <u>all</u> of conditions specifi by § 4C1.1. Specifically, one or more of the followi criteria applies:	
1) the defendant has criminal history points from Chapter Four, Part A;	m
☐ 2) the defendant received an adjustment under U.S.S.G. § 3A1.4 (Terrorism);	er
☐ 3) the defendant used violence or credible threat of violence in connection with the offense;	īs



Since a determination of ineligibility has been made, the matter is formally submitted to the presiding District Court Judge. Defense counsel, whether retained, appointed, or pro bono, has fourteen days to object to the initial assessment of ineligibility. After the fourteen day period, and in the absence of an objection by defense counsel, the presiding District Court Judge may adopt the recommendation of the Magistrate Judge and may rule on the motion for reduction of sentence.

☑ The defendant may be eligible for a sentence reduction and therefore the matter is referred to a United States District Judge.

The presiding judicial officer shall wait for the parties' stipulation of a sentence reduction within fourteen days. If no stipulation is reached within this period, the presiding judicial officer shall wait for the United States Probation Office, defense counsel, and the Government's memoranda, which shall be filed within another fourteen days.

Reasons:

Defendant pled guilty to aiding and abetting in using and carrying firearms during and in relation to a crime of violence that resulted in the death of a person. Dkt. 125 at 1-2 (Plea Agreement). Defendant received 3 criminal history points, 2 of which were added because he committed the instant offense while under a criminal justice sentence. Dkt. 183 at 7, ¶ 24 (PSR). He was thus placed in criminal history category II. Id. Given his total offense level of 40, he had a guideline range of 324 to 405 months. Dkt. 189-1 at 1 (Statement of Reasons). Defendant received a 324-month sentence. Dkt. 189 at 2 (Judgment).

Under Amendment 821, Defendant would not have received the 2 points for committing the instant offense while under a criminal justice sentence. With 1 criminal history point, he would have instead been placed in criminal history category I, which gives him a guideline range of 292-365 months. Accordingly, Defendant may be eligible for a sentence reduction.

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 12th day of March, 2024.

s/ Bruce J. McGiverin
BRUCE J. McGIVERIN

United States Magistrate Judge